

DRAFT
Friday, July 11, 2008

Memorandum of Agreement
Between
The Central Valley Flood Protection Board and the
California Department of Water Resources

This Memorandum of Agreement (MOA) is made and entered into by and between the Central Valley Flood Protection Board (Board) and the California Department of Water Resources (DWR) on this _____ day of _____ 2008.

Recitals

1. The California State Reclamation Board was established in 1911 as an independent State agency and retained that status until 1957 when DWR was established and the Board was made part of DWR, but retained its independent funding, staff, authority and jurisdiction relating to California's Central Valley flood control program.
2. The Board retained its independent staff and funding until 1969 when the Secretary for Resources issued a directive transferring the Board's funds and personnel to DWR to "assist in achieving an integrated statewide flood control program administered and executed by the Department of Water Resources." Thereafter, the Board and DWR established a cooperative relationship which preserved the Board's independent authority and jurisdiction relating to

California's Central Valley flood control program while utilizing DWR's designated personnel resources to support programmatic and administrative functions.

3. In 2006, the voters approved Proposition 1E and Proposition 84 authorizing approximately \$4.9 billion to be invested to improve flood management programs within the State. Proposition 1E directed that DWR prepare the State Plan of Flood Control and made available approximately \$3.0 billion to make improvements to the Central Valley flood system and Delta levees, and Proposition 84 made an additional \$0.6 billion available for the same area. It is the intent of the Board and DWR to work cooperatively to develop and implement flood management programs in the Valley that provide the maximum public safety benefit and coordinate the activities of the Board and DWR.
4. In 2007, the Legislature enacted AB 5 along with a number of other flood control measures to provide greater flood protection in the whole State, but with emphasis on the Central Valley.
5. This legislation changed the name of the Reclamation Board to the "Central Valley Flood Protection Board." In addition, it modified Water Code Section 8550 to read as follows:

Section 8550(a). The board is continued in existence and shall continue to exercise and have all of its powers, duties, purposes, responsibilities, and jurisdiction.

(b) Notwithstanding any other provision of law, the board shall act independently of the department. The department shall not overturn any action or decision by the board.

(c) It is the intent of the Legislature to transfer the duties and corresponding funding allocated to the Reclamation Board as it exists on December 31, 2007, together with all necessary positions, to the board as it is reconstituted on and after January 1, 2008.

6. The legislation also establishes significant new flood management programs to make Central Valley residents and local governments aware of flood risk, to incorporate up-to-date information about flood risk into land use planning, to map areas of flood risk, and to develop a Central Valley Flood Protection Plan. Successful implementation of these programs will require close cooperation and coordination between the Board and DWR.
7. DWR and the Board agree that the enactment of these significant new various flood control measures and the passage of Propositions 1E and 84, require adjustment of the existing programmatic and administrative relationship between

the Board and DWR so that the Board may carry out its new and existing responsibilities.

8. Because the Central Valley flood management program is vital to the safety and well-being of the people of the Central Valley and to the economic health of the State as a whole, it is the desire of the Board and DWR to maintain their existing cooperative relationship. This MOA between the Board and DWR governs the programmatic and administrative relationship between them while preserving the Board's and DWR's independent authority and jurisdiction relating to California's Central Valley flood management program.
9. The parties hereby enter into this agreement for DWR to continue to provide administrative and programmatic support to the Board under the conditions set forth herein.

Now, therefore, it is hereby agreed as follows:

1. The Board and DWR will exercise their best efforts to work cooperatively and collaboratively to develop and implement an integrated State flood management program for the Central Valley, while preserving their independent authorities and jurisdiction as set forth in the law. DWR will continue to provide programmatic and administrative support to the Board. The Board and DWR recognize that their work programs and the obligations under this MOA are subject to

budgetary and staff availability and other constraints and sometimes subject to approval of State government officials and agencies outside of DWR. DWR and the Board shall consult on any proposed changes in budgetary limitations, staff availability and other constraints.

2. All previous delegations of Board authorities to DWR are hereby rescinded.
3. For purposes of this MOA, administrative support means those services required to conduct business as an element of State Government. Programmatic support means those services of a technical nature that are essential to developing an integrated flood management program for the Central Valley.
4. DWR will continue to provide administrative support to the Board, including but not limited to financial controls and accounting, personnel, management of information systems and internet, and contract administration.
5. With respect to programmatic services, DWR and the Board will strive to avoid duplicating efforts while recognizing that their respective legal authorities result in separate priorities and deadlines that must also be accommodated. The Board's primary responsibilities include protecting the integrity of the State's Plan of Flood Control and its component facilities in the Central Valley, providing assurances to the Federal Government in accordance with Water Code Sections 8617 and 12657, requiring that State assurances provided to the Federal

Government regarding the operation and maintenance of flood facilities in the Central Valley are continuously honored, cooperating with local agencies in project development, reviewing and commenting on draft general plan elements with regard to flood risk and compliance with State mandated minimum levels of protection, and providing an opportunity for public input on these and other Board actions. DWR's primary responsibilities include planning for improvement of the State's flood management program for the Central Valley, controlling and managing State funds for improvement of facilities of the State's Plan of Flood Control in the Central Valley, reviewing design of State funded improvements for compliance with appropriate engineering criteria, and operation and maintenance of plan facilities as set forth in the Water Code. The Board and DWR will work collaboratively on these and related programmatic matters as described in the remaining provisions of this MOA.

6. The Board will rely on its staff for the review of and recommendations on the issuance of all permits for non-flood control improvements that encroach upon elements of the States Plan of Flood Control in the Central Valley. Board requests for technical assistance from DWR will be on a case-by-case basis, and DWR is free to comment through staff on these actions.
7. Authority to approve or deny any flood control improvements affecting any element of the State's Plan of Flood Control in the Central Valley is vested in the Board and will usually be processed as an encroachment permit or other

processes established to alter federally constructed flood control projects. The Board will rely on its staff to analyze how such improvements affect the integrity of the State's Plan. In evaluating system integrity, the Board's primary focus will be on project induced changes to the State's Plan hydraulics and flow frequency relationships and their impacts on public safety. If the improvement is State funded, DWR will provide its conclusion of the projects' compliance with appropriate engineering criteria for consideration. For projects not State funded, the Board's staff will independently review the project for appropriate engineering criteria. The Board must also secure the U.S. Army Corps of Engineers' (Corps) approval of the improvement. For State funded improvements, DWR and the Executive Officer shall agree on an approach to securing Corps approval. In all other cases, securing Corps approval shall be the responsibility of the Executive Officer.

8. The Board shall make all decisions relating to hiring and assigning work to the Executive Officer. The Executive Officer shall make all staffing decisions relating to the Board's existing direct staff (staff reporting to the Executive Officer). Any new positions reporting to the Executive Officer shall become a part of the direct staff and shall be subject to Executive Officer staffing decisions. The Executive Officer shall make its direct staff available to DWR upon request during flood fights or other emergencies.

9. The Board and DWR shall pursue a reorganization through appropriate channels that would place staff in the Floodway Protection Section as direct staff of the Board. This section shall continue to process applications for encroachments within the State Plan of Flood Control in the Central Valley and designated floodway limits.
10. The Board may retain independent Legal Counsel to provide representation of the Board and its direct staff at Board meetings and other services as appropriate. At the request of the Board, and if such representation does not result in an actual conflict, DWR will furnish legal services including but not limited to such areas as environmental compliance and review, public records responses, contracts, real estate, employment matters and other legal matters as needed to assist Board staff in the implementation of the Board's program.
11. The Board shall decide all Sacramento-San Joaquin Drainage District real estate matters, except as delegated below. The Board hereby delegates authority to the Director of DWR, with the authority to redelegate, the responsibility for all real estate support services required by the Board, including but not limited to maintaining real estate records, appraising property, preparing maps, negotiating acquisition of property and preparing necessary documents, accepting title and executing right of entry permits on behalf of the Board, arranging for project-related utility relocations, preparing resolutions of necessity when eminent domain is warranted, requesting, where necessary, cancellation of taxes on land

acquired by the Board and managing existing real estate holdings, including management of leases. DWR shall maintain a list of properties held by the Sacramento and San Joaquin Drainage District, noting existing uses and leases.

12. DWR shall continue to support the Board in its cooperative projects and studies with the U.S. Army Corps of Engineers for developing and implementing new flood control projects throughout the Central Valley. DWR shall provide semi-annual updates to the Board of the status of ongoing projects. In addition, DWR shall negotiate Project Cooperation Agreements, Local Project Cooperation Agreements and other agreements necessary for the Board's programs. DWR shall coordinate the preparation and review of NEPA, CEQA and other environmental documents. DWR shall participate with the Corps in analyzing the feasibility of flood projects, reviewing design and construction documents, and coordinating with local project sponsors. DWR shall administer the Delta Levee Maintenance Subventions Program.
13. The Flood Project Integrity and Inspection Branch (Inspection Branch) which will remain under the direction of DWR shall continue to support both DWR and the Board. The Inspection Branch shall continue to inspect levees for compliance with maintenance assurances and other U.S. Army Corps of Engineers requirements, and perform construction inspections and inspections of designated floodways on behalf of the Board and other inspections as requested by the Board.

The Inspection Branch staff will inspect work approved under encroachment permits to confirm that the work will not adversely affect the State Plan of Flood Control. DWR and the Board will cooperate to develop priorities for inspections. The Inspection Branch will prepare an annual report for the Board summarizing the result of the inspections. The parties agree that if inspectors are added to the Floodway Protection Section, they will perform some of the tasks presently assigned to the Inspection Branch.

14. An organizational chart of the divisions and sections of DWR is attached to this MOA as Exhibit 1. As positions change or are redefined, this agreement will be interpreted so that the functions described above and reflected in Exhibit 1 will be carried out regardless of the names or titles of the branches.
15. DWR will schedule, in coordination with the Board's Chief Engineer and Executive Officer, work with the U.S. Army Corps of Engineers to meet program commitments within budgetary limitations.
16. The Board may contract for programmatic services required to implement the Board's programs. Board and DWR staff will cooperatively prepare the contract documents and administer the contracts.
17. DWR and the Board will collaborate in developing the Board's annual budget, which shall be presented as an easily identified separate item in DWR's budget.

At the earliest feasible point in the development of its budget, but no later than October 15 of each year, DWR shall provide to the Board's Executive Committee a spreadsheet showing the direct, indirect and shared positions providing programmatic services to the Board as well as the estimated funding for each of these positions. The Board's Executive Officer and Executive Committee will use this information to identify any anticipated changes in the Board's need for programmatic services. After these changes have been clarified through discussion with DWR, Board staff shall prepare necessary Budget Change Proposals, and jointly with DWR pursue approval with the Department of Finance.

18. The Deputy Director of Flood Management and Safety will serve as principal contact with the Board and its Executive Officer, and will coordinate indirect and shared support of the Board's programmatic and administrative functions. The Chief of the Flood Projects Office shall be the principal contact with Board staff.
19. Whenever DWR is to present schedules, plans or other items for approval of the Board, DWR will submit the necessary materials to the Board staff in conformance with the Central Valley Flood Protection Board Guidelines for Submission of Support Information for Board Items attached hereto as Exhibit 2 or shall obtain a waiver from the Executive Officer as set forth in the guidelines.

20. The parties agree that in the event of any dispute arising out of this MOA, the parties will first attempt to resolve such conflict through discussions between the Executive Officer of the Board and the DWR principal contact with the Board. If the parties are unable to resolve the dispute, they will next attempt to resolve such dispute through discussions between the President of the Board and the Director of the Department.
21. This Memorandum of Agreement may be terminated by either the Board or DWR upon 30-day written notice to the other party.
22. This MOA may be amended at any time by the written agreement of the parties.
23. In the event of a conflict between the terms of this MOA and any existing agreements between the Board and DWR, this MOA controls.

In Witness Whereof, the parties hereto by their respective officers duly authorized, have executed this agreement on the day and year first written above.

Central Valley Flood Protection Board

By _____
President

Department of Water Resources

By _____
Director

Central Valley Flood Protection Board
Guidelines for Submission of Support Information for Board Items

Applicants are cautioned that 2007 legislation established new evidentiary hearing requirements mandating Board approval of all encroachment permits. These requirements significantly increase the staff effort required to process a permit and the resulting workload peaks in preparation for each Board meeting. Furthermore, the Bagley-Keene Act requires that the Board Meeting Agenda provide a minimum of 10 days of notice. Allowing for printing and mailing, the agenda must be finalized 16 days prior to the meeting date. Consequently, the time required for processing Board business has increased. In order to provide the best possible chance for timely consideration of matters requiring Board action, applicants should contact the Board's Executive Officer or Chief Engineer at the earliest possible date and reach agreement on a schedule for a specific matter. An agreed upon schedule supersedes these guidelines.

In the following table, the listed time is intended to provide an estimate of the minimum time that must elapse between the applicant's submission of complete information and the Board meeting at which the matter will be considered. When public safety might otherwise be seriously compromised or there are other overriding circumstances, these guidelines may be waived by the Executive Officer.

Description	Example / Comment	CEQA Status	Minimum time (days)
Items which are exempt from CEQA and do not require an encroachment permit	Agreements, letters, budgets, procedural and administrative matters	Exempt	30
Project approvals not involving an encroachment permit.	Projects where the Board is the non-federal sponsor	all	45
Encroachment Permit for work that is not a flood control improvement	Crossings, fences, stairs, boat docks and similar items	all	45
Encroachment permit for a flood control improvement	Modifications to a flood control element of the State Plan of Flood Control in the Central Valley	all	60
DWR review and conclusion as to the technical adequacy of plans for Early Implementation Projects	DWR is responsible for determining if the design of projects receiving state funds meet appropriate engineering criteria	n.a.	40
Flood risk related changes to the building code	Legislatively mandated changes to the building code	n.a.	60
12/31/08 Mapping Schedule and subsequent updates	Legislatively mandated flood mapping	n.a.	45
12/31/08 Schedule for Status Report on the State Plan of Flood Control	Legislatively mandated status report	n.a.	60
12/31/08 Status report on project levees maintained by local agencies and subsequent updates	Legislatively mandated annual reports	n.a.	60
12/31/09 Status Report on the State Plan of Flood Control	Legislatively mandated status report	n.a.	60
12/31/10 Status Report on the Central Valley Flood Control Plan	Legislatively mandated status report	n.a.	60
1/1/12 delivery of Draft Central Valley Flood Control Plan to Board	Legislatively mandated completion date	Not currently known	0
7/12/12 Board revisions to and adoption of Central Valley Flood Control Plan	Legislatively mandated Board actions	Not currently known	0
Board action on proposed deletions and additions to the State Plan of Flood Control	Legislatively mandated Board actions	Not currently known	90